

REMARKS/ARGUMENTS

In the restriction/election of species requirement mailed April 29, 2009, the Examiner divided the claims into eight different Groups, as shown on page 2 of the Office Action, indicating that there are eight (VIII) patentably distinct inventions. The Examiner further required the election of a single species, plus a single and specific illness to be treated/detected.

Accordingly, Applicants elect Group I, Claims 1-20, 28-29 in part 26-27 drawn to a polypeptide less than 30 amino acids in size and further electing a single species SEQ ID NO 2, RHSRIGIIQQRTRNG, plus elect Viral infection as a single and specific illness to be treated or detected, all with traverse.

The claims of Groups I-VIII are integrally linked as compounds and method of treatments/method of use.

Restriction is only proper if the claims of the restricted Groups are independent or partially distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. §803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Compounds/composition and the use thereof should be examined together. It is a technical relationship that involves the same feature, and it is this technical relationship that defines the contribution which each of the Groups, taken as a whole makes over the prior art.

Final product and the method of use thereof should be examined together on the merits, especially wherein the utility of the product is that recited in the specification. Different classifications of subject matter to be divided is not conclusive proof of independent status and divisibility.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further the M.P.E.P. §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

Applicants request that if the invention of Group I is found allowable, Groups II-VIII which include the limitation of the allowable claims be rejoined.

Applicants further request that should the elected species be found allowable, the Examiner expand the search to include the non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to double-patenting ground of rejection. 35 U.S.C. §121, In re Joyce (Commr. Pats. 1957, 115 USPQ 412).

Applicants submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

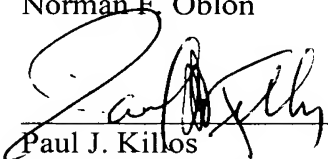
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